IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

[1] S.B. CIVIL WRIT PETITION NO.998/07
Salim Khan Pathan **Versus** State & Ors.

[2] S.B. CIVIL WRIT PETITION NO.7414/05
Bhanwar Singh **Versus** State & Ors.

[3] S.B. CIVIL WRIT PETITION NO.7060/05
Mahesh Chandra **Versus** State & Ors.

[4] S.B. CIVIL WRIT PETITION NO.1000/07
Salim **Versus** State & Ors.

[5] S.B. CIVIL WRIT PETITION NO.9080/05
Mangi Lal **Versus** State & Ors.

[6] S.B. CIVIL WRIT PETITION NO.7385/05
Dhula Ram **Versus** State & Ors.

[7] S.B. CIVIL WRIT PETITION NO.7386/05
Bhairu Nath **Versus** State & Ors.

[8] S.B. CIVIL WRIT PETITION NO.7387/05
Sita Bai **Versus** State & Ors.

[9] S.B. CIVIL WRIT PETITION NO.7388/05
Hara Ram Meena **Versus** State & Ors.

[10] S.B. CIVIL WRIT PETITION NO.7389/05
Wali Mohammed **Versus** State & Ors.

[11] S.B. CIVIL WRIT PETITION NO.7390/05
Basheer Khan **Versus** State & Ors.

[12] S.B. CIVIL WRIT PETITION NO.7391/05
Bagdi Ram **Versus** State & Ors.

DATE OF ORDER :: 09/04/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Yogesh Kumar Sharma, for petitioners
Mr. Pradeep Shrimal] for respondents
Mr. A.K. Sharma]

Instant petitions have been filed by petitioners-workmen assailing the order of the appropriate government whereby the authority has revised/declined to make a reference for adjudication in exercise of its power u/s.12(5) of Industrial Disputes Act, 1947.

Basic grievance which the petitioners have raised in the instant petitions is that while declining to make a reference by the appropriate government, it was commented upon on merits of the dispute which the authority was not competent to examine the limited scope available u/s.12 of the Act, 1947 and in support of contention, counsel has placed reliance on the Division Bench judgment of Main Seat at Jodhpur in D.B. Civil Special Appeal [Writ] No.525/06 [DR/J], decided on 6th November, 2006, wherein identical issue has been examined and observed as under:

> "Apparently, the appropriate government, the State Government in the present case, has exceeded its jurisdiction in considering the failure report submitted by the Joint Commissioner and for the purpose of opining whether to refer the dispute to Industrial Labour Court/Tribunal as the case may be by entering into merit of dispute and deciding itself the dispute by giving finding on contentions raised. This is not the domain of the State Government while considering failure report u/s.16 of the ID Act, 1947 and therefore, the order rejecting the refusal to make reference by deciding the merit of the issue cannot be sustained and it has to be set aside.

> Accordingly, while we sustain the order of the learned Single Judge in setting aside the order of the appropriate government. However, it is not for this court to make a direction for making a reference to the Labour Court by appropriate government. Appropriate direction which can be given to the appropriate government is to consider the nature of the dispute in the light of object of making such reference under Industrial Disputes Act, which is primarily to maintain industrial peace and decide whether it is a case in which the reference ought to be made or not. Therefore, the order of the learned Single Judge is modified to that extent by directing the State Government to consider the question of making a reference of the dispute on relevant consideration. Positive mendate to make a reference is set aside".

In view of judgment of Division Bench [supra], the present writ petitions succeed and are hereby allowed. The orders passed by the appropriate government dt.25.05.2005, dt.23.05.2005 & 15.06.2005 are hereby quashed and set aside and the matter is remitted back to the appropriate government to consider the dispute and pass appropriate orders in accordance with law. Compliance be made within two months.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.